

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 97-0300
GROSS INCOME TAX
For Tax Periods: 1989, 1992-1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUES

1. GROSS INCOME TAX: Taxation of Royalties

Authority: 45 IAC 1-1-51.

Taxpayer disputes the imposition of gross income tax on royalty income for a patent for the years 1992 and 1993.

2. TAX ADMINISTRATION: Penalty

Authority: 45 IAC 15-11-2 (b).

Taxpayer disputes the imposition of the ten per cent penalty.

STATEMENT OF FACTS

Taxpayer is a worldwide manufacturer of aluminum and aluminum products. Taxpayer produces a wide variety of products such as aluminum cans, consumer products and a variety of industrial and commercial grade aluminum. Taxpayer has several Indiana manufacturing plants and offices. Taxpayer timely protested this assessment. More facts will be provided as necessary.

GROSS INCOME TAX: ROYALTY INCOME

DISCUSSION

Taxpayer's first point of protest concerns the assessment of gross income tax on royalty income for the years 1992 and 1993. Taxpayer holds the patent on tab top technology for aluminum cans. This tab top technology is leased to third parties. Those third parties pay a royalty to Taxpayer for use of the tab top technology. The auditor assessed gross income tax on the royalty income received from customers located in Indiana. Taxpayer had an Indiana facility during the audit period. Taxpayer contends that the subject royalty income does not have sufficient nexus with Indiana to subject it to the gross income tax.

Taxpayer's commercial domicile is in Virginia. All of the research and development of the tab top technology took place in Virginia. The receipts in question are taxed in Virginia. Contracts concerning the leasing of the tab top technology are drawn up and administered in Virginia. The day to day administration of all issues concerning the tab top technology for aluminum cans takes place in Virginia. The attorneys who draw up, control and review legal documents and manage lawsuits connected with this technology are in Virginia. All lawsuits are tried under Virginia or Delaware law.

Indiana Regulation 45 IAC 1-1-51 states,

If a commercial domicile is established in a state other than Indiana, no income from intangibles will be taxed under IC 6-2-1-1(m){Repealed by P.L. 77-1981, SECTION 22} unless the taxpayer has also established a business situs in Indiana and the intangible income derived therefrom forms an integral part of that situs.

Although Taxpayer had a facility or business situs in Indiana during the audit period, the commercial domicile was Virginia. All the business activity concerning the royalty income was conducted out of the commercial domicile in Virginia. The royalty income could not be considered an integral part of the Indiana facility. Therefore the royalty income for tab top technology is not subject to Indiana gross income tax.

FINDING

Taxpayer's protest is sustained.

TAX ADMINISTRATION: PENALTY

DISCUSSION

Taxpayer filed an amended return for 1989 that carried back a Net Operating Loss from 1992 to 1989, Taxpayer erroneously used the original 1989 return as opposed

to the audited 1989 tax return. Since the original 1989 return had a greater income figure than the audited 1989, the refund paid to Taxpayer was overstated.

Indiana Regulation 45 IAC 15-11-2 (b) states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

In this case, Taxpayer failed to use reasonable care in determining the proper tax return and proper figures to use in determining the Net Operating Loss figure and computing the proper amount of tax on the 1989 amended tax return. Taxpayer was negligent and the penalty properly applies

FINDING

Taxpayer's protest is denied.